

**DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS: 00-0408; 00-0409
Indiana Gross Income Tax
For the Tax Years 1995, 1996, and 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Imposition of Gross Income Tax on Revenues Derived from Taxpayer's Procurement and Transfer of Steel Products – Prospective Treatment.

Authority: IC 6-8.1-3-3; IC 6-8.1-3-3(b); City Securities Corp. v. Dept. of State Revenue, 704 N.E.2d 1122 (Ind. Tax Ct. 1998).

Taxpayers argues that they are entitled to prospective treatment of the Department's determination that income, derived from the procurement of steel on behalf of third-party customers, was subject to the state's gross income tax.

STATEMENT OF FACTS

Taxpayers are sister corporations involved in the purchase and sale of various commodities. The audit determined that income received by the taxpayers from certain transactions involving the procurement of steel and steel related products was subject to the state's gross income tax scheme. The taxpayers initially argued that they were merely service providers and, because they never took title or possession of the steel commodities, the income was not subject to gross income tax. The original Letter of Findings disagreed with the taxpayers' contention and determined that the transactions were indistinguishable from the straightforward purchase and sale of steel commodities.

The taxpayers submitted a request for rehearing in which the taxpayers maintained that they could present new evidence demonstrating that they were entitled to prospective treatment of the determination arrived at within the original Letter of Findings. The request for rehearing was granted, and this Supplemental Letter of Findings addresses the prospective treatment issue.

DISCUSSION

I. Imposition of Gross Income Tax on Revenues Derived from Taxpayer's Procurement and Transfer of Steel Products – Prospective Treatment.

Taxpayers predicate their argument for prospective treatment on the ground that a previous audit, conducted for the years 1988 through 1990, found that income from similar steel procurement transactions was not subject to gross income tax. According to the taxpayer, “it would be unconscionable to now tax us going back almost 10 years when we clearly relied on the findings of the Indiana Department of Revenue and continued to perform our business and prepare our records in the same manner.”

Under IC 6-8.1-3-3, the Department of Revenue is without authority to reinterpret a taxpayer’s tax liability without promulgating and publishing a regulation giving taxpayer notice of that reinterpretation. IC 6-8.1-3-3(b) states that “[n]o change in the department’s interpretation of a listed tax may take effect before the date the change is (1) adopted in a rule under this section or (2) published in the Indiana Register”

In City Securities Corp. v. Dept. of State Revenue, 704 N.E.2d 1122 (Ind. Tax Ct. 1998), plaintiff taxpayer argued that the Department could not impose gross income tax on the gain realized from the sale of tax exempt bonds, because that gain had been treated as exempt for 42 years. Id. at 1128. Plaintiff taxpayer argued that, in the absence of a new rule or regulation, the Department’s assessment of gross income taxes against the gain realized from the sale of the tax exempt bonds was invalid. Id. at 1129. The Tax Court found that, despite the intervening adoption of regulations to the contrary, the Department could not impose the additional taxes when the Department had permitted plaintiff taxpayer to claim an exemption from the taxes subsequent to the adoption of the intervening regulations. Id. However, the Tax Court also held that plaintiff taxpayer, having been placed on notice its additional tax liability, was responsible for paying the tax on a prospective basis. Id.

Taxpayers believe that they are in the same situation as plaintiff taxpayer in City Securities and, as a consequence, are entitled to the same prospective treatment on their own tax liability. Specifically, taxpayers cite to a prior audit conducted for the period March 1988 through March 1990 and completed approximately ten years ago.

In response to questions submitted to the taxpayers during the prior audit, taxpayers stated that it was in the business of buying steel from Indiana steel producers and that “[t]he steel is sold to branches of [Taxpayer One]. [Taxpayer Two] does not carry inventory.” Taxpayer One’s branches were located outside Indiana. Based on the taxpayers’ own reply, the prior audit would have reasonably concluded that all of the sales went to out-of-state locations. Since taxpayers had no inventory within the state, the prior audit would have concluded that there were no taxable sales within Indiana.

Unlike the prior audit, the current audit concluded that taxpayers maintained an inventory of steel within the state. In addition, the current audit concluded that the taxpayers were engaged in “back to back” transactions occurring entirely within the state. The steel originated at an Indiana steel plant and came to rest with an Indiana customer. Even though taxpayers were out-of-state entities, the steel transactions occurred exclusively within the state and the proceeds of those transactions were properly subject to Indiana’s gross income tax.

Absent any indication that the prior audit considered transactions functionally identical to those transactions considered within the current audit, that the explanations taxpayers provided during the two audits were identical, or that the taxpayers' specifically relied upon an adjustment made and explained within the prior audit report, taxpayers' request for prospective treatment must be denied.

For the three tax periods here at issue, the original Letter of Findings determined that taxpayers' "business is indistinguishable from the straightforward purchase and sale of steel commodities," and that the revenue attributable to those transactions is subject to the state's gross income tax. Because there is no indication that the Department is "reinterpreting" taxpayers' tax liability, the Department has no basis upon which to grant taxpayers' request for prospective treatment of that liability.

FINDING

Taxpayers' protest is respectfully denied.

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